

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BERTHA S.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C20-6024-MLP

ORDER

I. INTRODUCTION

Plaintiff seeks review of the denial of her application for a Period of Disability, Disability Insurance Benefits, and Supplemental Security Income. Plaintiff contends the administrative law judge (“ALJ”) erred by improperly evaluating medical evidence, by discounting her testimony, by declining to weigh lay witness testimony, and by crafting a deficient residual functional capacity (“RFC”). (Dkt. # 24.) As discussed below, the Court AFFIRMS the Commissioner’s final decision and DISMISSES the case with prejudice.

II. BACKGROUND

Plaintiff was born in 1977, has at least a high school education, and previously worked as a medical receptionist and shipping order clerk. AR at 42-43. Plaintiff applied for benefits in October 2017, alleging disability as of September 15, 2016. *Id.* at 33. Plaintiff's application was

1 denied initially and on reconsideration. The ALJ held a hearing in October 2019, taking
 2 testimony from Plaintiff and a vocational expert. *See id.* at 69-110. In October 2019, the ALJ
 3 issued a decision finding Plaintiff not disabled. *Id.* at 30-49. In relevant part, the ALJ found
 4 Plaintiff's severe impairments of fibromyalgia, digestive distress, anxiety, and adjustment
 5 disorder limited her to light work subject to a series of further limitations. *Id.* at 35-38. Based on
 6 vocational expert testimony, the ALJ found Plaintiff could perform past relevant work. *Id.* at 42.
 7 The Appeals Council denied review, making the ALJ's decision the Commissioner's final
 8 decision. *Id.* at 1-6. Plaintiff appealed this final decision of the Commissioner to this Court. (Dkt.
 9 #3.)

10 III. LEGAL STANDARDS

11 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
 12 security benefits when the ALJ's findings are based on legal error or not supported by substantial
 13 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
 14 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
 15 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
 16 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error
 17 alters the outcome of the case." *Id.*

18 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
 19 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
 20 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
 21 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
 22 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
 23 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may

1 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
 2 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
 3 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

4 IV. DISCUSSION

5 A. The ALJ Did Not Err in Evaluating the Medical Evidence

6 Plaintiff filed her disability claim in October 2017. The regulations effective March 27,
 7 2017, 20 C.F.R. §§ 404.1520c(c), 416.920c(c), require the ALJ to articulate how persuasive the
 8 ALJ finds medical opinions and to explain how the ALJ considered the supportability and
 9 consistency factors. 20 C.F.R. §§ 404.1520c(a), (b), 416.920c(a), (b). The regulations require an
 10 ALJ to specifically account for the legitimate factors of supportability and consistency in
 11 addressing the persuasiveness of a medical opinion. Thus, the ALJ is required to provide specific
 12 and legitimate reasons to reject a doctor's opinions. *See, e.g., Kathleen G. v. Comm'r of Soc.*
 13 *Sec.*, 2020 WL 6581012, at *3 (W.D. Wash. Nov. 10, 2020) (finding that the new regulations do
 14 not clearly supersede the "specific and legitimate" standard because the "specific and legitimate"
 15 standard refers not to how an *ALJ* should weigh or evaluate opinions, but rather the standard by
 16 which the *Court* evaluates whether the ALJ has reasonably articulated his or her consideration of
 17 the evidence).

18 Further, the Court must continue to consider whether the ALJ's analysis is supported by
 19 substantial evidence. *See* Revisions to Rules Regarding the Evaluation of Medical Evidence, 82
 20 Fed. Reg. 5852 (January 18, 2017) ("Courts reviewing claims under our current rules have
 21 focused more on whether we sufficiently articulated the weight we gave treating source opinions,
 22 rather than on whether substantial evidence supports our final decision ... [T]hese courts, in
 23 reviewing final agency decisions, are reweighing evidence instead of applying the substantial

1 evidence standard of review, which is intended to be highly deferential standard to us.”). With
2 these regulations and considerations in mind, the Court proceeds to its analysis of the medical
3 evidence in this case.

4 1. *Examining Psychologist David Barrett, Ph.D.*

5 Dr. Barrett examined Plaintiff on February 22, 2018, and opined Plaintiff “has serious
6 physical problems which have precipitated anxiety and depression symptoms. Her concentration
7 and memory are affected, perhaps by her anxiety and/or by her pain and medication, and this
8 would make it difficult for her to learn and carry out at least complex job tasks. Her anxiety and
9 pain also make it difficult for her to go out and be around others and this would probably make
10 getting to and staying on a job questionable.” AR at 494. The ALJ found Dr. Barrett’s opinion
11 “unpersuasive.” *Id.* at 42.

12 The ALJ first discounted Dr. Barrett’s opinion as inconsistent with the mental status
13 examination findings, noting Plaintiff “was able to spell a word, do serial counting exercises, and
14 perform a three-step command.” AR at 41. The ALJ’s finding is not substantially supported by
15 the record. Plaintiff’s ability to “spell a word, do serial counting exercises, and perform a three-
16 step command” is not reasonably inconsistent with Dr. Barrett’s assessment that Plaintiff would
17 have difficulty “learn[ing] and carry[ing] out at least complex job tasks” and “go[ing] out and
18 be[ing] around others.” *Id.* at 494. However, the error is harmless because the ALJ accounted for
19 these limitations in the RFC. *See Molina*, 674 F.3d at 1115.

20 The ALJ next discounted Dr. Barrett’s opinion as inconsistent with Plaintiff’s “own
21 abilities,” referring to Plaintiff’s statements “that she leaves the house every day, she drives
22 places, she shops in stores, and she likes to go to the [m]all to walk[.]” AR at 42. The ALJ noted
23 “while Dr. Barrett said that the claimant’s ability to get to and stay on the job are questionable, I
conclude his statements were based on inaccurate representations made by the claimant.” *Id.*

1 Substantial evidence supports this ground. Notably, Plaintiff reported walking around the mall
 2 “2-3 times per week” for “about 2-3 hours.” AR at 599. This material inconsistency between the
 3 doctor’s opinion and Plaintiff’s level of activity is a valid reason for rejecting the doctor’s
 4 opinion. *See, e.g., Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (upholding ALJ’s
 5 decision to discredit treating physician where his opinions were “inconsistent with the level of
 6 activity that [plaintiff] engaged in”); *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 601–
 7 02 (9th Cir. 1999) (upholding ALJ’s rejection of treating physician’s opinion where it was
 8 contradicted by plaintiff’s daily activities). The ALJ thus did not err by discounting the doctor’s
 9 opinion as inconsistent with Plaintiff’s own level of activity.

10 Finally, the ALJ discounted Dr. Barrett’s opinion as inconsistent with the “statements of
 11 other medical sources.” AR at 42. Substantial evidence supports this ground. The ALJ cited
 12 numerous treatment records that are at odds with Dr. Barrett’s assessment. *See id.* at 39 (citing
 13 *id.* at 416, 420, 498, 503, 528, 610, 653, 656, 660, 664, 672, 675, 678, 681, 684, 687, 680, 683).
 14 The ALJ accordingly did not err by discounting the doctor’s opinion on this ground. *See*
 15 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (not improper to reject an opinion
 16 presenting inconsistencies between the opinion and the medical record).

17 **B. The ALJ Did Not Err by Discounting Plaintiff’s Testimony**

18 The ALJ found Plaintiff presented objective medical evidence establishing underlying
 19 impairments that could cause the symptoms alleged and made no finding she was malingering.
 20 AR at 38-39. The ALJ was thus required to provide “specific, clear, and convincing” reasons
 21 supported by substantial evidence to discount Plaintiff’s testimony. *Trevizo v. Berryhill*, 871 F.3d
 22 664, 678 (9th Cir. 2017).

1 Among other grounds, the ALJ discounted Plaintiff's testimony as inconsistent with her
 2 activities, finding Plaintiff "stated she can drive, attend [c]hurch, and she can do light
 3 housework, laundry, and light cleaning" and "is able to shop in stores, walk places, go outside
 4 almost every day, handle money, and get along with others without difficulty." AR at 40. As
 5 discussed above in the context of Dr. Barrett's opinion, Plaintiff's activities are inconsistent with
 6 her allegations. The ALJ accordingly did not err by discounting Plaintiff's testimony on this
 7 ground. *See, e.g., Molina*, 674 F.3d at 1113 ("The ALJ could reasonably conclude that Molina's
 8 activities, including walking her two grandchildren to and from school, attending church,
 9 shopping, and taking walks, undermined her claims that she was incapable of being around
 10 people without suffering from debilitating panic attacks.").

11 Because the ALJ gave at least one valid reason for discounting Plaintiff's testimony, the
 12 Court need not address the balance of the ALJ's stated reasons for discounting Plaintiff's
 13 testimony. Any inclusion of erroneous reasons was inconsequential and therefore harmless. *See*
 14 *id.* at 1115 (where ALJ provided at least one valid reason to discount testimony, error in
 15 remaining reasons is harmless).

16 **C. The ALJ Did Not Err by Declining to Weigh Lay Witness Testimony**

17 An ALJ may discount lay witness testimony by giving a germane reason. *Diedrich v.*
 18 *Berryhill*, 874 F.3d 634, 640 (9th Cir. 2017). Plaintiff argues the ALJ erred by failing to discuss
 19 testimony submitted by her husband. The Commissioner avers the error is harmless in light of
 20 the similarities between the Plaintiff's testimony and her husband's testimony. (Dkt. # 25 at 12
 21 (citing *Molina*, 674 F.3d at 1122).) The Court agrees with the Commissioner. *See Guith v.*
 22 *Kijakazi*, 2021 WL 3721436, at *1 (9th Cir. Aug. 23, 2021) ("The ALJ's failure to address the
 23 lay witness statement of Guith's father was harmless error because the ALJ gave clear and

1 convincing reasons for rejecting Guith's testimony, and Guith's father's statement was similar to
2 Guith's testimony.") (citing *Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th
3 Cir. 2009)). The ALJ accordingly did not harmfully err by declining to weigh the lay witness
4 testimony.

5 **D. The ALJ Did Not Err by Formulating Plaintiff's RFC**

6 Plaintiff argues the Court should find the ALJ's RFC determination is erroneous. The
7 argument is foreclosed because, as discussed above, the ALJ validly assessed the medical
8 evidence and validly discounted Plaintiff's testimony.

9 **V. CONCLUSION**

10 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED**, and this
11 case is **DISMISSED** with prejudice.

12 Dated this 3rd day of September, 2021.

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15 MICHELLE L. PETERSON
16 United States Magistrate Judge
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